

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SONOS, INC.,

Plaintiff,

v.

GOOGLE LLC,

Defendant.

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NO. 6:20-cv-00881-ADA

**PLAINTIFF SONOS, INC.'S REPLY IN SUPPORT OF
MOTION FOR LEAVE TO AMEND OR SUPPLEMENT COMPLAINT**

I. INTRODUCTION

Google does not “in principle” oppose Sonos’s request to add the ’885 Patent. Resp. at 1. Instead, Google spends its entire response insisting that the Scheduling Order must be adjusted by eight weeks for all dates between now and the *Markman* hearing (including the Markman hearing itself) *for all patents*. *Id.* Google’s position is an obvious delay tactic, as it presents no reason why such a delay is necessary. The Court should grant Sonos’s motion to amend the Complaint and, if the Court is inclined to adjust the schedule, adopt Sonos’s proposed deadlines.

II. ARGUMENT

Google fails to identify *any* reason that the Scheduling Order for all patents needs to be adjusted. Nor can it. The addition of the ’885 Patent has *no* bearing on the validity of the already-asserted patents such that Google needs any additional time to evaluate and prepare its invalidity contentions and claim construction arguments. Google’s attempt to adjust the schedule for every deadline for all patents over the next five months is a clear delay tactic. Such an adjustment is also unreasonable. While Google *says* that only the dates through *Markman* need to be adjusted, Google’s 8-week delayed schedule would inherently bleed into the remaining post-*Markman* deadlines. There is simply no reason that the entire case schedule needs to be reworked in light of the addition of a single patent, especially a patent related to, and sharing a specification with, two already asserted patents.

Moreover, Google does not dispute that a targeted schedule for the ’885 Patent can easily merge into the existing deadlines. Nor does Google assert that it is incapable of meeting Sonos’s proposed deadlines. In fact, conspicuously missing from Google’s submission is *any* statement that it is unable to meet the deadlines that Sonos proposes. Instead, Google summarily claims that it is “unnecessarily prejudiced” by the shortened timeframe (but provides no explanations of such prejudice). Resp. at 3. This argument fails for at least two reasons. First, Google ignores that its

invalidity contentions at this early stage are *preliminary*. Under the Scheduling Order, Google may amend its contentions over the next six months. *See* Dkt. 31 at 1, n.1. Any “prejudice” that Google suffers from having to produce invalidity contentions for the ’885 Patent on a shortened schedule is easily cured by this Court’s built-in procedures. Second, Google ignores that the ’885 Patent stems from the same family as, and shares a specification with, two patents already asserted in this case. As Google has already begun its investigations of those related patents, an abbreviated schedule for the ’885 Patent is entirely reasonable—especially given Sonos served Google with its preliminary ’885 Patent infringement contentions over two weeks ago.

Finally, Google complains that Sonos will have had more time to develop its infringement contentions than Google will for its invalidity contentions. But that is the case for every plaintiff in every litigation. Due diligence and an adequate pre-filing investigation are *required* prior to bringing a lawsuit. Sonos should not be penalized for ensuring it had adequate grounds to assert the ’885 Patent and preparing the necessary paperwork before moving to amend. Nor did the Scheduling Order require Sonos to rush to add the ’885 Patent, as the deadline for such an amendment is nearly eight months away. Any notion that Sonos did not move quickly enough here, particularly given that the ’885 Patent issued at the end of November 2020, is simply unfounded

III. CONCLUSION

For the foregoing reasons, Sonos respectfully requests the Court grant Sonos leave to amend the Complaint to add the ’885 Patent. If the Court is inclined to adjust the Scheduling Order, Sonos requests the Court adopt Sonos’s proposal, summarized below.

	Existing Deadline	Sonos's Proposed Deadline for '885 Patent Only	Google's Proposed Deadline for All Patents
Defendant's Preliminary Invalidity Contentions	February 5, 2021	February 19, 2021	April 2, 2021
Exchange claim terms for construction	February 19, 2021	February 24, 2021	April 16, 2021
Exchange proposed claim constructions	March 5, 2021	All remaining dates the same	April 30, 2021
Disclose extrinsic evidence	March 12, 2021		May 7, 2021
Meet and confer to narrow disputed terms and exchange revised list of terms and constructions	March 19, 2021		May 14, 2021
Plaintiff files Opening claim construction brief	March 26, 2021		May 21, 2021
Defendant files Responsive claim construction brief	April 16, 2021		June 11, 2021
Plaintiff files Reply claim construction brief	April 30, 2021		June 25, 2021
Defendant files Sur-Reply claim construction brief	May 14, 2021		July 9, 2021
Submit Joint Claim Construction Statement	May 19, 2021		July 14, 2021
Submit optional technical tutorials	May 21, 2021		July 16, 2021
<i>Markman</i> hearing	June 4, 2021		July 30, 2021

Dated: January 27, 2021

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 27, 2021, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document through the Court's CM/ECF system.

/s/ Alyssa Caridis
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